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1979

# State of Utah v. Jacob J. Lamorie : Brief of Appellant

Utah Supreme Court

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THE STATE OF UTAH

Plaintiff

vs.

JACOB J. LAMORIE

Defendant

STATE OF UTAH

Appeal from the  
of Section 76-10-5  
Annotated (1953)  
of a dangerous weapon  
for a felony.

Attorney

Robert B. Hansen  
Attorney General  
State of Utah  
State Capitol Building

Attorney for Respondent

FILED

OCT 12 1970

IN THE SUPREME COURT  
OF THE STATE OF UTAH

Utah Supreme Court, Utah

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THE STATE OF UTAH,

Plaintiff-Respondent,

vs.

Case No. 16534

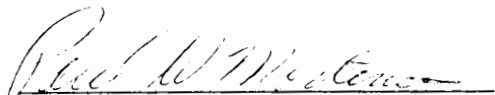
JACOB J. LAMORIE,

Defendant-Appellant.  
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To be added immediately above and prior to State v. Estrada  
under CASES CITED on page ii of the BRIEF OF APPELLANT:

Burks v. United States 437 US 1, 57 L ED 2d 1,  
98 S Ct 2141 (1978). . . . . 19

The foregoing correction is made so that the TABLE OF CONTENTS  
includes the aforementioned case which has been cited at page 19  
of the BRIEF OF APPELLANT.

  
\_\_\_\_\_  
PAUL W. MORTENSEN  
Attorney for Defendant and Appellant

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff-Respondent,

vs.

Case No. 16534

JACOB J. LAMORIE,

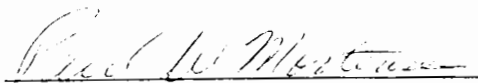
Defendant-Appellant.

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To be added at line 25 of page 19 of the BRIEF OF  
APPELLANT following ". . . shall be acquitted".:

Also, the holding of State v. Lawrence  
has been expressly overruled by the United  
States Supreme Court in Burks v. United  
States 437 US 1, 57 L Ed 2d 1, 98 S Ct  
2141 (1978).

The aforementioned case holds that the double jeopardy  
clause of the Fifth Amendment of the United States Constitution  
precludes a second trial when conviction in a prior trial is  
reversed by reviewing court solely for lack of sufficient evidence  
to sustain the jury's verdict.

  
PAUL W. MORTENSEN  
Attorney for Defendant and Appellant

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### STATEMENT OF THE CASE

This is an appeal from a conviction for violation of Section 76-10-503(2) Utah Code Annotated (1953), as amended, possession of a dangerous weapon while on parole for a felony.

### DISPOSITION IN LOWER COURT

Appellant was tried by jury in the Seventh Judicial District Court in and for Grand County, the Honorable Boyd Bunnell presiding, and found guilty of possession of a dangerous weapon while on parole for a felony. He was sentenced to serve 1 to 15 years in the Utah State Prison, the penalty imposed by Section 76-3-203(2) Utah Code Annotated (1953), as amended, for a second degree felony.

### RELIEF SOUGHT ON APPEAL

Pursuant to Point I and Point II herein, appellant prays the judgment of the lower court be reversed for insufficient evidence and that he be acquitted of the charge and discharged from prison. Alternatively, pursuant to Point III herein, appellant prays that the judgment of the lower court be reversed for insufficient evidence and that the case be remanded for judgment and sentencing for a third degree felony.

### STATEMENT OF FACTS

On the afternoon of October 14, 1978, Jesse Powell, a trooper for the Utah Highway Patrol, was driving west on the highway between



Crescent Junction and Green River, in Grand County, Utah. He was off duty at the time and was returning to Green River with some boy scouts from a scout camp. Approximately 10 miles east of Green River, Trooper Powell saw a van that had apparently run off the road and rolled over. He stopped the truck he was driving, directed the boy scouts to bring his first aid kit and approached the van to see if he could assist the van's occupants. At the time he observed the appellant who was still in the vehicle and he also observed another man, Dale Lowery, who was outside of the vehicle (T. 17, 51, 52, 53).

Trooper Powell first talked with Lowery, who he learned had been the driver of the vehicle (T.12, 52). Trooper Powell and Lowery then went around the van to talk to the appellant (T. 18). Trooper Powell noted that the appellant appeared to be injured and offered to assist. However, the appellant told Trooper Powell that he did not want any first aid and told him to get out and leave him alone (T. 18). Trooper Powell thereupon advised the appellant that he was an off duty highway patrol officer and he and Lowery thereafter persuaded the appellant to leave the van and to allow Trooper Powell to administer minor first aid. Following this, the appellant again requested that Trooper Powell leave (T.17, 18).

Charles Durrant, one of the boy scouts who had been directed by Trooper Powell to bring the first aid kit, testified that he observed the appellant, after Trooper Powell had finished talking with him, go around to the other side of the van and pick up what appeared to him to be a short shotgun which was broken open but

in one piece (T. 35, 36), although he also stated that he could have been mistaken about what the appellant was holding (T. 46). Durrant was, at that time, told by the appellant to ". . . get out of here. I don't need your help" and thereupon Durrant returned to Trooper Powell's truck (T. 37).

At some point another car drove up and when its occupants offered to take the appellant to receive medical assistance, the appellant got into the car. However, Trooper Powell told the car's occupants that the appellant appeared to be under the influence of alcohol, advised them that they should not take the appellant and removed the appellant from the car (T. 18).

After this, Trooper Powell returned to his truck to check on the boy scouts (T. 19). He was subsequently joined there by Lowery. While by his truck Trooper Powell observed the appellant running along behind a ridge of dirt next to the road in a "crunched position" into a wash. Lowery, thereafter, joined the appellant in the wash. At approximately that point Trooper David Bailey of the Utah Highway Patrol arrived (T. 19, 20). Trooper Powell advised Trooper Bailey that two suspects were down in the wash and that Trooper Powell thought one of them had a weapon. Together they then approached the appellant and Lowery who had been sitting in the wash. The appellant and Lowery, in turn, stood up and approached the troopers. The appellant had a metal scabbard in his hand (T. 52). Trooper Bailey testified that the appellant was foul, abusive and uncooperative but that the appellant did not fight with or threaten

him (T. 53, 56). Trooper Bailey was of the opinion that both Lowery and the appellant were under the influence of alcohol and Lowery, after admitting having been the driver of the van, was arrested for driving under the influence of alcohol. The appellant was placed under arrest for public intoxication and both the appellant and Lowery were taken to Trooper Bailey's vehicle and transported by Trooper Bailey to Green River, Utah (T. 52, 53).

After the appellant and Lowery were arrested, Trooper Powell and the two boy scouts searched the wash for a sword that might go with the scabbard and for the gun. One of the scouts found the sword. They continued the search and the stock portion of a shotgun was found in the wash. Thereafter, the action portion of a shotgun was also found in the wash and a shotgun shell was found laying nearby (T. 22).

Subsequently, Lowery and the appellant were transported to Moab, Utah. Lowery and the appellant both denied owning the shotgun, although Lowery admitted owning the van, the sword and metal scabbard and other items in the van (T. 55, 56, 59, 60). Lowery was later released from jail after paying a fine (T. 69). The appellant was charged with possession of a dangerous weapon while on parole for a felony. Appellant was tried and convicted by a jury and afterwards sentenced by the Seventh Judicial District Court, Grand County, to serve 1 to 15 years at the Utah State Prison.

## ARGUMENT

### POINT I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR  
BY IMPROPERLY ADMITTING INADMISSIBLE HEARSAY  
EVIDENCE OFFERED BY THE STATE TO PROVE THAT  
THE APPELLANT WAS ON PAROLE AND HAD BEEN  
CONVICTED OF A FELONY.

The appellant was charged, and tried and convicted by jury under Section 76-10-503(2) of the Utah Code Annotated (1953), as amended, which reads as follows:

"(2) Any person who is on parole for a felony or is incarcerated at the Utah state prison shall not have in his possession or under his custody or control any dangerous weapon as defined in this part. Any person who violates this section is guilty of a felony of the third degree, and if the dangerous weapon is a firearm, explosive or infernal machine, he shall be guilty of a felony of the second degree."

The State, in the case at hand, did not attempt to prove that the appellant was incarcerated at the Utah state prison but did attempt to prove that the appellant was on parole for a felony while possessing or controlling a dangerous weapon. Therefore, before the appellant could be found guilty of a second degree felony under Section 76-10-503(2) the State was required to prove: (1) that the appellant was on parole (2) for a felony (3) had in his possession or under his control (4) a dangerous weapon (5) which was a firearm, explosive or infernal machine. Before a defendant can be convicted of the crime alleged the State must prove beyond a reasonable doubt each element of the crime. (See Section 76-1-501(1) of Utah Code Annotated (1953), as amended). The State in the appellant's case failed to prove by admissible evidence that the appellant was

on parole for a felony.

The State called Joseph L. Waters, a parole agent for the State of Colorado Division of Parole as its first witness. The State attempted to use Mr. Waters in two different ways to prove that the appellant was on parole and had been convicted of a felony. First, the State attempted to elicit by direct testimony from Mr. Waters proof that the appellant was on parole for a felony on the date he was arrested (T. 4, 5, 8). Second, the State attempted to use Mr. Waters to identify and authenticate State's EXHIBIT "1" which the State intended to offer to prove that the appellant was on parole for a felony. (The complete transcript of Mr. Waters' testimony and copies of the documents of which State's EXHIBIT "1" consists are included in the appendix to this brief.) The appellant repeatedly objected to both attempts by the State to prove that he was on parole for a felony (T. 4,5,6,7,8,14,16), but his objections were overruled by the Court (T. 5,8,14,15). In overruling the appellant's objections the Court erred.

First, the Court erred in allowing Mr. Waters to personally testify over the appellant's objection that the appellant was on parole for a felony when arrested (T. 5,15), since Mr. Waters admitted that he had no personal knowledge that the appellant had ever been convicted of any crime and since Mr. Waters admitted that his knowledge regarding the appellant's parole status was based on hearsay. Mr. Waters testified as follows on voir dire:

"BY MR. MORTENSEN:

Q Mr. Waters, were you personally in court the day

at any time when you saw the defendant convicted of any crime?

A No, sir.

Q The only way or method that you've come across the knowledge you have in this case that he should be on parole is because of documentation that has been forwarded to you and things told to you by certain people; is that correct?

A Yes. And by the authority vested in me by the State of Colorado in receiving certain information given to me." (T. 9).

Rule 63 of the Utah Rules of Evidence provides that evidence of a statement which is made other than by a witness while testifying at the hearing offered to prove the truth of the matter stated is hearsay evidence and inadmissible unless an exception is available. Mr. Waters' testimony was clearly hearsay under Rule 63 and was clearly without an exception under any of the subsections under Rule 63. Therefore, the Court erred in admitting such testimony.

Second, the Court erred in admitting, over appellant's objections, State's EXHIBIT "1" into evidence, and in thus allowing the jury to conclude from State's EXHIBIT "1" that the appellant was on parole for a felony when arrested. State's EXHIBIT "1" consisted of four documents. Two of the documents were entitled "Parole Agreement" and each contained as a signature the name of the appellant. Neither of the parole agreements made any reference to whether or not the appellant had ever been convicted of a felony. The remaining two documents of which the State's

EXHIBIT "1" consisted were: (1) a document entitled "Judgment of Conviction Sentence and Mittimus", dated the 17th day of June, 1974, and (2) a document entitled "District Court -- Mittimus to State Reformatory", dated June 9, 1972. The Judgment of Conviction Sentence and Mittimus and the District Court -- Mittimus to State Reformatory each stated that a person named Jacob Joe Lamorie had been adjudged guilty of committing a burglary and each contained the signature of a person purporting to be a deputy clerk of the Second Judicial District Court of the State of Colorado.

There can be no question that State's EXHIBIT "1" was hearsay evidence under Rule 63. In admitting State's EXHIBIT "1" the Court apparently relied upon subsections 13 and 17 of Rule 63 which are the Business Entries and Content of Official Records exceptions respectively (T. 14). Subsection 13 of Rule 63 reads as follows:

"(13) Business Entries and the Like. Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness;"

Clearly, exception 13 does not apply to the situation at hand inasmuch as the record is wholly void of any proof that the Judgment of Conviction Sentence and Mittimus or the District Court -- Mittimus to State Reformatory were memoranda or records of acts, conditions or events that had been made by employees of the Colorado Division of Parole at or about the time of the event recorded. Each of the

two documents just mentioned, on its face, purported to be a document prepared by a deputy clerk of the Second Judicial District Court of Colorado. Neither purported on its face to have been prepared by an officer or employee of the Colorado Division of Parole. Mr. Waters never stated that either document had been made by the Colorado Division of Parole.

Exception 17 reads as follows:

"(17) Content of Official Record. Subject to Rule 64 (a) if meeting the requirements of authentication under Rule 68, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein, . . ."

Rule 68, in turn, states:

"(1) Authentication of Copy. An official record of an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and in the absence of judicial knowledge or competent evidence, accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of his office. . ."

Rule 68 imposes two requirements for authentication of copies of official records: (1) The copy must be attested as an accurate copy of the original. (2) The person so attesting must be the officer having the legal custody or his deputy. Neither requirement of Rule 68 was met by the State in this action.

Regarding the attestation requirement of Rule 68, Mr. Waters expressly admitted on voir dire that he did not know whether or not



the copies of the Judgment of Conviction Sentence and Mittimus and the District Court -- Mittimus to State Reformatory before the Court were true and accurate copies of the originals:

"Q What we have here certified is a copy of a copy; is it not?

A No. I would say it's a copy of an original. I wouldn't know. I mean, that's my understanding: It's a copy of the original. I didn't go to the court and look it up." (T. 13, 14).

Without any proof from Mr. Waters as to the accuracy of the copies, the only other avenue available to the State to prove that the copies were true and accurate was to rely on the certificate which appeared on each of the copies and read as follows:

"City and County of Denver, Colorado

CERTIFIED TO BE FULL, TRUE AND CORRECT COPY AS IT APPEARS IN THE RECORD KEPT BY THE OFFICE OF THE ADULT PAROLE & COMMUNITY SERVICES

Subscribed and sworn to before me this 20th day of October, 1978.

/s/ SHIRLEY TRAVER  
Notary Public

(SEAL)

My Commission Expires Nov. 25, 1978"

The certificate was stamped on the back of each of the copies and although it bore the signature of a notary public it was not signed by a person having the official custody of the records or his deputy. This being the case, the certificate was not sufficient to meet the attestation requirement of Rule 68. And, even assuming

Mr. Waters admitted that he was not a clerk of the court and that he had nothing to do with court records (T. 9). Therefore, since the requirements of Rule 68 were not met, State's EXHIBIT "1" was not admissible under subsection 17 of Rule 63.

Finally, it must also be noted that subsection (20) to Rule 63 does not apply to the situation at hand. Subsection (20) reads:

"Judgment of a previous conviction, evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment. . ."

This exception does not apply because the State's attempted use of evidence of a final judgment adjudging the appellant guilty of a felony in this case was not "to prove any fact essential to sustain the judgment". The State was attempting to prove the fact of a judgment of guilt of the commission of a felony itself, not facts essential to prove that judgment. And, even if this exception were applicable, proper identification and authentication is a prerequisite to admissibility of the evidence of a conviction where the judgment of conviction occurred in a different court. See 30 Am Jur 2d, Evidence Section 988. As already shown above, the documents of which State's EXHIBIT "1" consisted were never properly authenticated. Since no exception to Rule 63 applied, the Court committed reversible error in admitting State's EXHIBIT "1".

## POINT II

THE APPELLANT COULD NOT BE CONVICTED OF THE CRIME ALLEGED SINCE THE STATE DID NOT PROVE THAT THE SHOTGUN WAS A DANGEROUS WEAPON.

At no time during the course of the trial did the State offer or introduce any evidence to prove that the shotgun (State's EXHIBIT "2") was capable of firing. Although Charles Durrant testified that he saw the appellant holding what he thought was a gun that had been broken open (T. 35, 36), Durrant admitted that the appellant never threatened him with the shotgun (T. 38, 46). No other witness called by the State testified that the appellant had threatened anyone with a shotgun. In fact, none of the other witnesses could testify that they had seen the appellant with the shotgun in his possession. Section 76-10-501(1) of the Utah Code Annotated (1953), as amended, defines "dangerous weapon":

"Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In construing whether an item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object, or thing; the character of the wound produced, if any; and the manner in which the instrument, object, or thing was used shall be determinative."

The record shows conclusively that the appellant never used any item in a manner such that its intended use would have been capable of causing death or serious bodily injury. Therefore, unless the shotgun itself constituted a dangerous weapon, the appellant could not have ever possessed a dangerous weapon. The Court, apparently consistent with the majority holding in State v. Nielsen 544 P2d 489 (Utah, 1975), instructed the jury that a sawed off shotgun was a

dangerous weapon even though no evidence was ever introduced to prove that the shotgun was capable of firing. The Court's INSTRUCTION NO. 4 read as follows:

"You are instructed that a "Dangerous Weapon" is any item that in the manner of its use or intended use is capable of causing death or serious injury.

In this case, I instruct you that a sawed off shot gun is a 'Dangerous' weapon."

The appellant, while recognizing the holding in State v. Nielsen, nevertheless, respectfully urges the court to reconsider its decision and to adopt as its holding in this case the dissenting opinion of Justice Maughn that a gun is not a dangerous weapon until it is proven to be capable of firing or until it is proven that its manner of use or intended use was that of a club or bludgeon. Since there was no proof that the shotgun was capable of firing or that its manner of use or intended use was that of a club or bludgeon, the appellant should not have been convicted of possessing a dangerous weapon.

### POINT III

THE APPELLANT SHOULD NOT HAVE BEEN SENTENCED FOR HAVING COMMITTED A SECOND DEGREE FELONY, SINCE THE JURY WAS NEVER INSTRUCTED THAT IT MUST FIND THAT THE DANGEROUS WEAPON MUST BE A FIREARM, EXPLOSIVE OR INFERNAL MACHINE.

The appellant was convicted by a jury of possession of a dangerous<sup>05</sup> weapon while on parole for a felony. The Court, thereafter, in pronouncing judgment, sentenced the appellant to be incarcerated in the Utah state prison for a term of 1 to 15 years, the penalty

for a second degree felony under Section 76-3-203(2) of Utah Code Annotated (1953), as amended. Section 76-10-503(2) requires the State to prove that the dangerous weapon possessed is a firearm, explosive or infernal machine before a defendant may be convicted of a second degree felony. However, before retiring to deliberate, the jury was instructed by the Court as follows:

"Instruction No. 3

Before you can convict the defendant of Possession of a Dangerous Weapon by one on Parole, you must find beyond a reasonable doubt all of the following elements:

1. That on or about the 14th day of October, 1978, the defendant had in his possession or under his custody or control a dangerous weapon.

2. That at the time the defendant was on parole for a felony.

If you believe that the evidence establishes each each of these essential elements of the offense of Possession of a Dangerous Weapon by one on Parole, it is your duty to convict the defendant of Possession of a Dangerous Weapon by one on Parole.

If the evidence has failed to establish beyond a reasonable doubt one or more of said elements, then you should find the defendant not guilty of the crime of Possession of a Dangerous Weapon by one on Parole."

It will be noted that Instruction No. 3 did not require the jury to separately find that the appellant possessed a firearm, explosive or infernal machine. Since the jury was never instructed that it must find that the appellant possessed a firearm, explosive or infernal machine, the appellant could not be convicted of a second degree felony but at most could be convicted only of a third degree felony. While the Court did instruct the jury that a

sawed-off shotgun is a dangerous weapon, it never instructed the jury that the appellant in fact possessed a sawed-off shotgun. Indeed, the Court could not so instruct the jury because to do so would have violated the appellant's right to trial by jury under the Utah State Constitution since such right may not be invaded by the presiding judge indicating to the jury that any such fact had been established by the evidence. State v. Estrada 119 Utah 339, 227 P2d 247, 248 (Utah, 1951).

When the jury failed to expressly find that the appellant possessed a firearm, explosive or infernal machine the Court could not, without invading the province of the jury and therefore violating the appellant's right to a trial by jury, find the appellant guilty of a second degree felony and sentence him for a term of 1 to 15 years under Section 76-3-203(2).

The judge could do no more than conclude that the appellant had been convicted of a third degree felony, and sentence him for a term not to exceed 5 years under Section 76-3-203(3). Therefore, the Court erred in sentencing the appellant for having been convicted of a second degree felony.

#### POINT IV

BECAUSE THE STATE FAILED TO PROVE EVERY ELEMENT OF THE OFFENSE CHARGED, THE APPELLANT MUST BE ACQUITTED AND DISCHARGED.

Section 76-1-501 of the Utah Code Annotated (1953), as amended, provides:

"(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted."

As shown by Point I above, the appellant was convicted by the use of inadmissible hearsay evidence to prove that he was on parole and has been convicted of a felony. If the hearsay evidence had been properly excluded upon the appellant's objection, the jury would have had no evidence whatsoever upon which to base a finding that the appellant was on parole or had been convicted of a felony. In the absence of proof of the appellant's being on parole or his conviction of a felony, the above statute would have mandated that the appellant be acquitted of the charge. Likewise, as shown by Point II above, the appellant was convicted in the absence of any proof that the shotgun that he was alleged to have possessed was a dangerous weapon. Again, the mandate of Section 76-1-501(1) requires that the appellant be acquitted and discharged since the State failed to prove beyond a reasonable doubt that the shotgun was capable of firing or that the appellant used it in a manner intended to cause death or serious bodily injury.

The fact that the appellant is now before an appellate court can not lessen the mandate of Section 76-1-501(1). He must be acquitted and discharged since the State failed to prove its case. Section 77-42-3 of the Utah Code Annotated (1953), as amended, provides:

"77-42-3. Power of Supreme Court on appeal. - The court may reverse, affirm or modify the judgment or order appealed from, and may set aside, affirm or

modifying any or all the proceedings subsequent to or dependent upon such judgment or order, and may, if proper, order a new trial."

Section 77-42-4 of the Utah Code Annotated (1953), as amended provides:

"77-42-4. Reversal of Judgment-Discharge of defendant. If a judgment against the defendant is reversed without ordering a new trial, the Supreme Court must, if he is in custody, direct that he be discharged therefrom, or if on bail, that his bail be exonerated, or if money has been deposited instead of bail, that it be refunded to the defendant."

The foregoing sections make clear that this court has the power to reverse a conviction and the power to directly discharge from custody a defendant without ordering him to again stand trial upon his successful appeal of a conviction. Availing itself of these powers and recognizing the mandate of Section 76-1-501(1) the court should reverse the appellant's conviction and order him discharged. It should acquit and discharge the appellant despite of its holding in State v. Lawrence 120 Utah 323, 234 P2d 600 (Utah, 1951) that upon reversal the appellant is entitled only to a retrial, since Section 76-1-501(1) was enacted by the legislature after State v. Lawrence was decided and since Section 76-1-501(1) unmistakably states that in the absence of proof "the defendant shall be acquitted".

In the event that this court were to conclude, contrary to the argument contained in Points I and II of this brief, that the State did prove by admissible evidence that the appellant was properly convicted of possessing a dangerous weapon while on parole for a felony, the fact nevertheless would remain that the jury failed to find, and that therefore the State failed to prove, that the dangerous

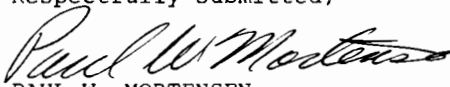


weapon possessed by the appellant was a firearm. Therefore, the appellant would necessarily have to be acquitted of the second degree felony charge, and judgment instead would have to be pronounced under the third degree felony provision.

#### CONCLUSION

The appellant requests that the judgment and verdict of the lower court be reversed for insufficient evidence and that he be acquitted and discharged from prison. Alternatively, the appellant requests that the judgment and verdict of the lower court be reversed for insufficient evidence and that his case be remanded for judgment and sentencing for a third degree felony.

Respectfully submitted,



PAUL W. MORTENSEN  
Attorney for Defendant and  
Appellant

## APPENDIX

- a. TRANSCRIPT OF JOSEPH L. WATERS TESTIMONY . . . . . iii - xv
- b. STATE'S EXHIBIT "1" . . . . . xvi-xxiv

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P R O C E E D I N G S

(After motions were made without objection, and granted, the jury was called and qualified and chosen, opening remarks were made by counsel, and the following proceedings were had.)

THE COURT: Call your first witness.

MR. BENGE: The State would call Mr. Joseph L. Waters.

JOSEPH L. WATERS,

called as a witness by and on behalf of the State of Utah, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BENGE:

Q State your name for the Court, please.

A My name is Joseph L. Waters.

Q Mr. Waters, where do you reside?

A I reside in Westminster, Denver, Colorado area.

Q What is your occupation?

A Parole Agent in the State of Colorado.

Q How long have you been in that capacity?

A About six years.

Q Mr. Waters, in your capacity as a parole agent for the State of Colorado, have you had the chance of meeting or becoming acquainted with Mr. Jacob Lamorie, that's seated at the counsel table?

A Yes, sir.

Q I would ask you that if on the 14th day of October, 1978 -

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1 was Mr. Lamorie on parole to your state?

2 MR. MORTENSEN: Objection, your Honor. Lack of founda-  
3 tion.

4 THE COURT: Well, you might lay a little foundation,  
5 Mr. Benge. Find out what his duties are, what his association was  
6 with Mr. Lamorie.

7 Q (By Mr. Benge) Very well, your Honor. Thank you. As a  
8 parole agent, Mr. Waters, what is your capacity; what are your  
9 duties?

10 A My duties are to supervise parolees. These are convicted  
11 felons and misdemeanants who have been released on parole from  
12 either the Colorado State Reformatory or Colorado State Penitentiary;  
13 and also supervision of interstate cases.

14 Q How did your relationship or acquaintance with Jacob  
15 Lamorie commence?

16 A I undertook the supervision in 1975 and again in 1978.

17 Q When you say, "undertook supervision," what do you mean  
18 by that?

19 A As a parolee. He was released from the Colorado State  
20 Reformatory and he was placed under my supervision.

21 Q I would now re-ask the question: If on the 14th day of  
22 October, 1978 -- was the defendant on parole from the State of  
23 Colorado?

24 MR. MORTENSEN: Objection, your Honor. Again, lack of  
25 foundation. I believe if we're going to have evidence introduced

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1 as far as documents go in this matter, we're going to have to have  
2 a foundation laid to the effect that this man is authorized under  
3 Colorado State Law to have custody of the documents that are  
4 involved.

5 THE COURT: Of course, there aren't any documents. State  
6 your grounds for objection to the question that was asked, Mr.  
7 Mortensen.

8 MR. MORTENSEN: I guess I'm anticipating the next question,  
9 your Honor.

10 THE COURT: Well, I can't sit and anticipate what the  
11 next question is going to be. We're concerned about this question,  
12 as to whether or not he was on parole on the 14th day of October,  
13 1978, in the State of Colorado.

14 MR. MORTENSEN: Well, your Honor, the answer to that  
15 comes from evidence which I believe was derived from hearsay.

16 THE COURT: That could be true, but that doesn't in and  
17 of itself make it inadmissible. I think we have 28 exceptions to  
18 the Hearsay Rule. The objection is overruled. You may answer the  
19 question, Mr. Waters.

20 THE WITNESS: Yes, sir. Mr. Lamorie was on parole on  
21 that date.

22 Q (By Mr. Bengé) Do you have the information at your  
23 disposal as to when he was placed on probation and when his parole  
24 would terminate?

25 A He was placed on parole on December 19th of 1974. He's

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1 actually served two numbers -- that means two sentences consecu-  
2 tively to each other. One will terminate in '79 and one in '81.

3 Q What month in '79?

4 A October 25th of 1979 and October 25th of 1981.

5 (Whereupon, State's Exhibit  
6 No. 1 was marked  
7 for identification.)

8 Q (By Mr. Bengé) I show you what I have had marked for  
9 identification as State's Proposed Exhibit 1. I'd ask you if you  
10 can identify that?

11 A Yes, sir. This is the mittimus out of Denver District  
12 Court.

13 Q And for the sake of the jury, what does that mean?

14 A This is a court mittimus signed by the deputy clerk of  
15 the Twelfth Judicial District, which I imagine is Denver, in which  
16 there is a finding of guilt for Second Degree Burglary.

17 MR. MORTENSON: Objection, your Honor.

18 THE COURT: The exhibit will speak for itself. It's  
19 admissible. Don't tell us what it says. We're just now trying to  
20 identify the document.

21 Q (By Mr. Bengé) Without going into the details of the  
22 documents, what do the documents purport to say?

23 A The court mittimus -- it's a document sentencing him to  
24 the Colorado State Reformatory.

25 MR. MORTENSEN: I object to this as hearsay, your Honor.

THE COURT: Objection is overruled.

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1 MR. BENGE: We'll offer State's Exhibit 1.

2 MR. MORTENSEN: Objection, your Honor. There's not been  
3 sufficient foundation laid for these several documents that are  
4 involved in State's Exhibit 1. One of the essential elements of  
5 this crime is to prove the defendant was in fact found guilty of  
6 a felony -- not just merely he's on parole with the State of  
7 Colorado.

8 THE COURT: What does that have to do with the document  
9 itself?

10 MR. MORTENSEN: Well, your Honor, it's the State's burden  
11 to prove --

12 THE COURT: I know what the State's burden is, but that  
13 doesn't have anything to do with this particular document.

14 MR. MORTENSEN: Your Honor, I just want to make clear  
15 that if this document is being entered to prove -- to show that  
16 the defendant was convicted in Colorado, there's been no proper  
17 foundation laid for that as required by the rules of the State of  
18 Utah. I want to make clear that has not been done. I would, for  
19 the record, object to the document itself as hearsay. Of course,  
20 we're in a two-level step here, first of all as to the parole here  
21 and the second -- the conviction element behind it.

22 THE COURT: Well, Mr. Benge, the objection is going to  
23 be sustained unless you can lay a foundation for that document.

24 Q (By Mr. Benge) All right. With regard to the document,  
25 State's Exhibit 1 before you, have you seen that document before?

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1 A Yes, I have.

2 Q Where have you seen it before?

3 A I have seen it both in my parole file and in our central  
4 office file.

5 Q Does the document, State's Exhibit 1 before you, have  
6 any form of authentication on it that you can see on the surface?

7 A Yes, sir. It's a notarized copy bearing the name of  
8 the notary public, Sherrie Traver.

9 Q What does it state?

10 A It appears in the record: "Kept by the office of adult  
11 parole and community services, subscribed and sworn before me this  
12 20th day of October 1978, signed by Sherrie Traver, Notary Public."

13 Q When you're in your capacity supervising the defendant,  
14 Mr. Lamorie, is it that document you are relying on in your  
15 authority to do so?

16 A No, sir, it is not. The immediate reliance is on the  
17 Colorado State Parole agreement -- which copies are here. (Indi-  
18 cating.)

19 Q With regard to your answer to a previous question before  
20 we started discussing the document, as to whether or not the  
21 defendant was on parole on the 14th day of October, 1978 -- was the  
22 defendant on parole for a felony?

23 MR. MORTENSEN: Objection, your Honor. That's hearsay.

24 THE COURT: Objection overruled.

25 MR. MORTENSEN: Your Honor, I would like to know the

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1 basis for -- Could I voir dire the witness?

2 THE COURT: Yes. You can voir dire the witness.

3 VOIR DIRE EXAMINATION

4 BY MR. MORTENSEN:

5 Q Mr. Waters, were you personally in court the day at any  
6 time when you saw the defendant convicted of any crime?

7 A No, sir.

8 Q The only way or method that you've come across the  
9 knowledge you have in this case that he should be on parole is  
10 because of documentation that has been forwarded to you and things  
11 told to you by certain people; is that correct?

12 A Yes. And by the authority vested in my by the State of  
13 Colorado in receiving certain information given to me.

14 Q Now, it's true, is it not, you're not under a legal  
15 obligation to maintain and keep the court's record of the State of  
16 Colorado?

17 A I don't understand that question. I'm not a clerk of  
18 the court, no. I have the parole records.

19 Q But you're not over the court records and have no author-  
20 ity there?

21 A I have nothing to do with the court records as far as  
22 being the court clerk, or nothing like that.

23 Q In fact, what happened is the clerk of the court  
24 typically just sends you a copy of what happened in court?

25 A It's part of the record. It's part of the record given

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1 to me. She doesn't send a copy to me. It would be sent to the  
2 clerk at the prison -- the records clerk of the prison and that's  
3 made part of his record. And I get his record.

4 Q All right. Drawing your attention to what is called a  
5 judgment and conviction sentence Mittimus, this is signed by the  
6 clerk of the court; is it not?

7 A It's signed by the deputy clerk.

8 Q And it's initialed from the clerk's office from the court?

9 A Yes, sir.

10 Q And that is an area, or the courts of Colorado are an  
11 area in which you have no authority to maintain legal documents of?

12 A Well, I have the document here and it's part of his  
13 record and I guess I have -- that gives me authority to maintain  
14 those records. I don't know. It's part of my job.

15 Q But the fact of the matter is you're under no obligation  
16 to maintain these records?

17 A The court mittimus is part of the file. I would say, yes,  
18 it's part of my job to have that, yes.

19 Q And you're required to have it in your file to proceed,  
20 of course; but you're not responsible for keeping the records of  
21 the court of Colorado?

22 A Oh, no, sir. No, sir.

23 Q Now, it's true that this is just a signed copy of the  
24 clerk --

25 A It is a copy, yes. A certified copy.

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1 Q Who was it certified by?

2 A It was certified by a notary public by the name of  
3 Sherrie Traver.

4 Q Does she have any authority under the law for the  
5 documents in your department?

6 A In our department I would say, yes.

7 Q Does Colorado law specifically state she is under a duty  
8 and obligation by the office she holds to keep and maintain those  
9 records by the department of parole?

10 MR. BENGE: I would object to what the law states -- this  
11 question being asked of this witness.

12 THE COURT: Well, let him answer if he can.

13 THE WITNESS: I don't know.

14 Q (By Mr. Mortensen) The fact of the matter is she's just  
15 an employee then; isn't she?

16 A Yes. She's an employee, definitely, yes.

17 Q And it was just simply her statement this was a true and  
18 correct copy of the separate documents here that were in your  
19 records?

20 A Yes, sir.

21 Q All right. You in fact never certified this or -- at the  
22 time the copy was made?

23 A I didn't certify it, no.

24 Q Drawing your attention to what is described as the  
25 Judgment and Conviction Sentence Mittimus, which was dated June of

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1 1974 -- June 17th, 1974, I would ask you to tell me how it was  
2 signed here?

3 A It was signed by Deputy Clerk Ilene -- I can't make out  
4 the name.

5 Q Can you describe to the jury and to the Court what is  
6 directly above her name?

7 A It's signed by District Judge Mitchell Johns.

8 Q Does his signature actually appear on that document?

9 A No.

10 Q Is it just a flat stamp with his name typed in?

11 A Yes.

12 Q And who would have typed that name in?

13 A I would imagine one of his clerical employees. A clerk  
14 probably.

15 Q Isn't it true that a document of the court would normally  
16 an original document of the court would be signed by the judge?

17 A No, sir, it is not. I've never seen one signed by the  
18 judge. It's always the clerk. When you ask for a mittimus, it  
19 will be the person here -- the clerk that signs it and not the  
20 judge. I mean that as far as my experience is concerned it's been  
21 that way.

22 Q But the fact of the matter is, nevertheless, that --  
23 Well, let's come back to it this way: This is a copy of the  
24 original document that's on file with the clerk of the court; is  
25 it not?

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1 A I would say, yes. Yes.

2 Q It's not the original document that's on file with the  
3 clerk of the court?

4 A No. It looks like a copy to me.

5 Q In fact, it says it's a copy which was received in your  
6 office sometime?

7 THE COURT: Mr. Mortensen, we're getting into matters  
8 that's obvious to the Court. You don't have to ask him regarding  
9 these things. He's testified he's brought it from his file. It's  
10 certified out of his file. So we know it's not the original from  
11 the court. I don't think you need to get into it, because right  
12 now you're presenting things and arguing on evidence that I'm aware  
13 of. So if you've got anything else to put on --

14 MR. MORTENSEN: I'm just about done on this, your Honor.

15 Q (By Mr. Mortensen) The point is: The copies here that  
16 have been signed by the deputy clerks are not copies of originals;  
17 are they?

18 A I think they're copies of originals, yes.

19 Q Well, you just testified that the original would be on  
20 file with the clerk of the court?

21 A Well, a copy has to be a copy of something.

22 Q What we have here certified is a copy of a copy; is it  
23 not?

24 A No. I would say it's a copy of an original. I wouldn't  
25 know. I mean, that's my understanding: It's a copy of the original.

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1 I didn't go to the court and look it up.

2 Q All I'm saying: This copy that was forwarded to  
3 Mr. Bengé's office was made off of a copy that was in your office;  
4 that's correct, isn't it?

5 A Yes.

6 Q And the copy that was in your office was, if anything,  
7 made from another copy that was in the courthouse or something?

8 A That's very likely.

9 MR. MORTENSEN: All right. That's all.

10 THE COURT: Mr. Waters, these documents are kept -- of  
11 which these are certified copies, are kept in the usual course of  
12 your duties? They're within your office; are they?

13 THE WITNESS: Yes, sir. They're kept under lock and key

14 THE COURT: These are actual copies of the documents  
15 that you have there and that you use in the course of your super-  
16 vision of the various people that come under your control; is that  
17 correct?

18 THE WITNESS: Yes. That's correct.

19 MR. BENGÉ: I'll renew my request, your Honor. May  
20 Exhibit 1 be received?

21 THE COURT: Yes. Exhibit 1 will be received in evidence.

22 MR. MORTENSEN: I have to object to that strenuously,  
23 your Honor.

24 THE COURT: You have objected. I'm overruling it. It  
25 clearly comes under an exception to the Hearsay Rule that it's

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1 kept in the usual course of business and under supervision. The  
2 testimony was it was under his supervision and control and had been  
3 for a number of years and the Court has the right to let him know  
4 why he had it under his supervision, and that these are the  
5 documents out of his file and that justifies that situation.

6 MR. MORTENSEN: But we've never had the judgment of  
7 conviction sentence --

8 THE COURT: Now you're arguing the evidence. I've ruled  
9 on the evidence that's before the court, Mr. Mortensen. I have  
10 heard it. You may sit down. Ask your next question, Mr. Bengé.

11 MR. BENGE: The question I was in the process of asking  
12 when Mr. Mortensen asked to voir dire the witness was: You did  
13 state that on the 14th day of October, that Mr. Lamorie was on  
14 parole. Was he on parole for a felony?

15 THE WITNESS: Yes, he was.

16 MR. BENGE: Thank you., I have no further questions.

17 THE COURT: You may cross-examine, Mr. Mortensen.

18 CROSS-EXAMINATION

19 BY MR. MORTENSEN:

20 Q I understand that there are two separate convictions  
21 involved here, supposedly?

22 A Yes, sir.

23 MR. MORTENSEN: Just a minute. Your Honor, I have no  
24 more cross-examination.

25 THE COURT: All right. Thank you, Mr. Waters.

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15  
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NO. I  
592  
Cliff Juddlock  
1-23-79



CSA

77-399

CSP

TO:

Jacob J. Blum

The COLORADO STATE BOARD OF PAROLE in Session at the Colorado State Reformatory  
 on Nov. 20, 1974 considered your application for parole and believing that you  
 can abide by the conditions of your parole agreement, hereby grants you parole effective  
December 18, 1974. Your parole will discharge on Dec. 20, 1975 (Review 76 mo.)  
 unless sooner terminated by order of the Board of Parole on motion of your Parole Officer or  
 the Parole Board.

## PAROLE AGREEMENT

I agree to be directed and supervised by officers of the Division of Parole and to be account-  
 able for my actions and conduct to the Division of Parole.

I further agree to abide by all conditions of parole as set forth in this agreement and any  
 additional conditions and directives as set forth by Parole Officers, consistent with the laws  
 of the State of Colorado. I fully understand that the violation of this agreement and/or any  
 conditions thereof can lead to the revocation of my parole. I further understand that the issu-  
 ance of a Warrant for my arrest by action of the Parole Board will terminate the accumulation  
 of time credits against my sentence.

## CONDITIONS OF PAROLE

1. RELEASE: Upon release from the institution, I shall go directly to Denver,

Colorado

as designated by the Board of Parole and report upon arrival to Louis O. Ruyer, Parole  
Supervisor III, Division of Adult Parole, P.O. State Services Bldg., 1225 Sherman  
Street, Denver, Colorado in person or as directed.

2. RESIDENCE: I shall establish a residence of record and shall reside at such residence  
 in fact and on record and shall not change this place of residence without the knowledge  
 and consent of my Parole Officer, and I shall not leave the area to which I am paroled  
 nor the State to which I am paroled without the permission of my Parole Officer.
3. CONDUCT: I shall obey all State and Federal laws and Municipal ordinances at all times.  
 I shall follow the directives of the Parole Officer.
4. REPORT: I shall make written and in person reports as directed by my Parole Officer  
 and I shall permit visits to my place of residence as required by the Parole Officer.
  - a. I further agree to submit to urinalysis or other tests for narcotics or chemical  
 agents upon the request of the Parole Officer.
  - b. I further agree to allow the Parole Officer to search my person or my residence or  
 any property under my control or any vehicle under my control upon request.
5. WEAPONS: I shall not use, possess, nor have under my control or in my custody any firearms  
 or other deadly weapon.
6. ASSOCIATION: I shall not associate with any known criminal in any manner which can reason-  
 ably be expected to result in, or which has resulted in, criminal or illegal activity.
7. ADDITIONAL CONDITIONS:

I have or I have had the foregoing document read to me and I have full and intelligent under-  
 standing of the contents and the meaning thereof and I have received a copy of this document.

I hereby affix my signature of my own free will and without reservation or coercion.

William A. Blum  
 For the State Board of Parole

December 18, 1974

Date

Jacob J. Blum  
 Signature of Parolee

Robert F. Blackwell  
 Witness

FB 8/774 (2) Parole Agreement

K74-573

State's <sup>2</sup>  
Case No. 71-CR-141  
John Michael Clerk  
Date 11-5-78

Subscription  
20th day of October 78.



*Shirley Brown*

My Commission Expires 10-25-1978

TO: JACOB J. LAMORICE

The COLORADO STATE BOARD OF PAROLE in session at the Colorado State Reformatory on Nov. 29, 1974 considered your application for parole and believing that you can abide by the conditions of your parole agreement, hereby grants you parole effective on December 23, 1974. Your parole will discharge on OCT. 25, 1981 (Rev. 10 mo.) unless sooner terminated by order of the Board of Parole on motion of your Parole Officer or the Parole Board.

## PAROLE AGREEMENT

I agree to be directed and supervised by Officers of the Division of Parole and to be accountable for my actions and conduct to the Division of Parole.

I further agree to abide by all conditions of parole as set forth in this agreement and any additional conditions and directives as set forth by Parole Officers, consistent with the laws of the State of Colorado. I fully understand that the violation of this agreement and/or any conditions thereof can lead to the revocation of my parole. I further understand that the issuance of a Warrant for my arrest by action of the Parole Board will terminate the accumulation of time credits against my sentence.

## CONDITIONS OF PAROLE

1. RELEASE: Upon release from the institution, I shall go directly to Denver, Colorado

as designated by the Board of Parole and report upon arrival to Parole J. W. Parole  
Supervisor III, Division of Adult Parole, P. O. State Services Bldg.,  
1225 Marion St., Denver, Colorado in person or as directed

2. RESIDENCE: I shall establish a residence of record and shall reside at such residence in fact and on record and shall not change this place of residence without the knowledge and consent of my Parole Officer; and I shall not leave the area to which I am paroled nor the State to which I am paroled without the permission of my Parole Officer.
3. CONDUCT: I shall obey all State and Federal Laws and Municipal ordinances at all times. I shall follow the directives of the Parole Officer.
4. REPORT: I shall make written and in person reports as directed by my Parole Officer and I shall permit visits to my place of residence as required by the Parole Officer.
- a. I further agree to submit to analysis in other tests for narcotics or chemical agents upon the request of the Parole Officer.
- b. I further agree to allow the Parole Officer to search my person or my residence or any premises under my control or any vehicle under my control upon request.
5. WEAPONS: I shall not own, possess, nor have under my control or in my custody any firearms or other deadly weapon.
6. ASSOCIATION: I shall not associate with any known criminal in any manner which can reasonably be expected to result in, or which has resulted in, criminal or illegal activity.
7. ADDITIONAL CONDITIONS:

I have or I have had the foregoing document read to me and I have full and intelligent understanding of the contents and the meaning thereof and I have received a copy of this document.

I hereby affix my signature of my own free will and without reservation or coercion.

[Signature]  
For the State Board of Parole

Jacob J. Lamorice  
Signature of Parolee

December 13, 1974

[Signature]  
Witness

Date

PB 8/774 (2) Parole Agreement

874-573

State's 2  
Case No. 78-CR-148  
James M. McLeod Clerk  
Date 11-6-78

County of Salt Lake, State of Utah  
I, James M. McLeod, Clerk of the Court,  
do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the Court.

Subscribed and sworn to before me on the  
20th day of October, 1978.



Shirley J. Howe  
Notary Public

My Commission Expires 12/31/78

NO. 70077 CT. RM. 13

D.P.D. NO. 158558

PEOPLE OF THE STATE OF COLORADO  
vs.

JACOB JOE LAMORIE  
Defendant

JUDGMENT OF CONVICTION  
SENTENCE AND ~~IMPRISONMENT~~

JUN 24 1974

PEOPLE OF THE STATE OF COLORADO to the Sheriff of the City and County of Denver, Colorado State Warden of Colorado State REFORMATORY

at BUENA VISTA Colorado. Now, on this day, this Court being in session, and it being the day and hour fixed for the sentence of JACOB J. LAMORIE the defendant herein, and the said defendant being personally present in Court and being represented by P. D. SCHUYLER Esq. His/Her Attorney, and it appearing to the Court that said defendant has heretofore been arraigned in this Court upon an "Information," previously filed herein charging the said Defendant with the Crime(s) of: RAPE, C.R.S. 1963, (as amended) 40-3-401 (CLASS 3 FELONY) and DEVIATE SEXUAL INTERCOURSE BY FORCE OR ITS EQUIVALENT C.R.S. 1963, (as amended) 40-3-403 (CLASS 3 FELONY) and ASSAULT IN THE SECOND DEGREE, C.R.S. 1963, as amended 40-3-203 (CLASS 4 FELONY) and SEXUAL ASSAULT, C.R.S. (counts continued on back) to which said defendant entered Plea of "Guilty," to which said defendant has been found guilty by the Court to the extent of the information to COUNT FIFTEEN: SECOND DEGREE BURGLARY, C.R.S. 1963, 40-4-203 (CLASS 4 FELONY)

ORDER COUNTS: 1 thru 14 BE DISMISSED

NOW THEREFORE, the Court being fully advised in the premises, it is the Judgment and Sentence of the Court that the defendant be sentenced to serve\* an indeterminate period not to exceed 2 years\*, ~~to be served in the State Reformatory at Buena Vista, Colorado.~~

\*~~that the sentence of imprisonment shall be served in the State Reformatory at Buena Vista, Colorado.~~

\*\*TYPE IN WHEN APPROPRIATE: ON EACH COUNT OF THE INFORMATION TO RUN CONCURRENTLY OR CONSECUTIVELY.

Said Defendant to be Imprisoned at the STATE REFORMATORY at BUENA VISTA Colorado in the matter required by law.

IT IS further ordered: SAID SENTENCE TO RUN CONSECUTIVELY WITH SENTENCE DEFENDANT IS NOW SERVING, AT THE STATE REFORMATORY.

NOW, THEREFORE, pursuant to said order of Commitment, we command you the Sheriff of the City and County of Denver to convey the said defendant with all convenient speed to the STATE REFORMATORY at BUENA VISTA Colorado and safely deliver him to the Warden of said institution to be received and kept as provided by Law.

Dated this 17th day of JUNE, 1974, Denver, Colorado.

Judge Mitchel B. Johns  
6-18-74 mm

/s/ Mitchel B. Johns  
District Judge

Enter into the records of this Court this 17th day of JUNE, 1974.

JAMES D. THOMAS  
Clerk of the Court

By Eileen Deason  
Deputy Clerk

RECEIVED VINE NOT SUPPLIED FOR PAROLE FILE



20th October 78

Shirley Jones  
Notary Public

My Commission Expires Nov. 25, 1978

7 317 COPY RECEIVED JUN 30 1972

DPD# 158558 DISTRICT COURT -- MITTNIUS TO STATE REFORMATORY

STATE OF COLORADO,  
CITY AND COUNTY OF DENVER, } ss.

No. 67552 - Div. 12

The People of the State of Colorado, to the Manager of Safety and Excise, and ex-Officio Sheriff of the City and County of Denver, and to the Warden of the State Reformatory of the State of Colorado, Greeting:

WHEREAS, At the January Term, last past, of our District Court, of the Second Judicial District of the State aforesaid, sitting in and for the City and County of Denver, upon a certain Information in our said District Court, against one

JACOB LAMORIE

for the crime of BURGLARY, C.R.S. 1963, 40-3-5 (as amended)

depending JUDGMENT was in our said District Court on the 9th day of June, 1972, Last past, given against the said

JACOB LAMORIE

THAT THE SAID defendant, JACOB LAMORIE

be by the Sheriff removed hence to the common jail of the City and County of Denver, and thence conveyed by the said Sheriff with all convenient speed to the State Reformatory of the State of Colorado, there to be delivered to the Warden or Keeper thereof, to be by him kept and confined therein according to law.

NOT TO EXCEED SIX (6) YEARS, PURSUANT TO THE 1967 CRIMINAL SENTENCING ACT, TIME HERETOFORE SPENT IN CUSTODY BY DEFENDANT AWAITING DISPOSITION IN THIS CASE HAVING BEEN CONSIDERED AT TIME OF SENTENCING.

SENTENCE HEREIN IMPOSED TO RUN CONCURRENTLY WITH THE SENTENCE DEFENDANT IS PRESENTLY SERVING.

WE THEREFORE COMMAND YOU, The Manager of Safety and Excise and ex-Officio Sheriff of the said City and County of Denver, that you take the body of the said

JACOB LAMORIE

and him safely convey to the County jail of the City and County of Denver, and there him safely keep and detain; and remove and convey him from there with all convenient speed to the State Reformatory of the State of Colorado, and there him safely deliver to the Warden of the said State Reformatory, together with this warrant.

AND DO YOU, THE SAID WARDEN, receive the body of the said

JACOB LAMORIE

and him confine in the said State Reformatory, and there him safely keep, according to the judgment of our said District Court as aforesaid.

WITNESS, FRANK H. CUNY, Clerk of our said Court, and the seal thereof, at Denver, in said County, this 9th day of June, 1972

ALVIN L. SHORT FRANK H. CUNY, Clerk.

6/13-vlp

By: [Signature] Deputy Clerk.

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO PRESS  
CHICAGO, ILL. 60607  
PRINTED IN THE UNITED STATES OF AMERICA

Successor to  
~~University of Chicago Press~~ October 7th

Shirley M. Jones  
Librarian

By Continuation of Rights Nov. 25, 1978



CERTIFICATE OF SERVICE

I hereby certify that I delivered two (2) copies of the foregoing Brief of Appellant to counsel for respondent, Robert B. Hansen, Attorney General, State of Utah, State Capitol Building, Salt Lake City, Utah 84114, this 23 day of July, 1979.

  
PAUL W. MORTENSEN